
LEVEL 1 PROCUREMENT MANUAL

OFFICE OF MANAGEMENT AND BUDGET

Prepared by

State Procurement Office
Central Services Division

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Request for Level I Certification

Chapter 1: Introduction

The purpose of this manual is to provide guidance to State of North Dakota executive branch employees who need to purchase commodities and services, regardless of the funding source. These guidelines are in accordance with N.D.C.C. Chapter 54-44.4, N.D.A.C. Article 4-12, and the written directives of Office of Management and Budget (OMB) related to procurement. These guidelines do not apply to entities, commodities, and services exempted by North Dakota Century Code (N.D.C.C.) 54-44.4 and North Dakota Administrative Code (N.D.A.C.) 4-12-01-04. If you need additional guidance, contact your agency's procurement section.

Before making any purchase, you must be delegated authority to purchase from your agency. Conduct only those procurements within the scope of your purchase authority. If your purchase authority is \$2,500 or less, you must signify that you have read and agree to comply with this manual by signing the Level 1 Procurement Certification application form located in the back of this manual. Submit the completed form to the procurement section of your agency or institution. If you have delegated purchase authority over \$2,500, visit the OMB State Procurement Office website at www.state.nd.us/csd/spo for information on training requirements and schedules.

Procurement is the process of purchasing, renting, leasing, or otherwise acquiring commodities or services; this includes preparing specifications, soliciting bids or proposals, evaluating and selecting sources, preparing and awarding a contract, and all phases of contract administration (ref. N.D.A.C. 4-12-01-02).

Chapter 2: Compliance, Ethics and Violations

2.1 Compliance

The state procurement program is the vehicle through which a significant amount of the state's taxpayer dollars is spent; therefore, the integrity of the state procurement program is paramount. The integrity of the state procurement program is dependent upon sound procurement practices and procedures that are consistently applied by all employees purchasing on behalf of the state. Any improper actions, or the appearance of improper actions, by state personnel or vendors can compromise that integrity.

Each person with authority to commit state funds through the state procurement process must know and abide by the laws, rules, and written directives of OMB that govern state procurement practices. Additionally, you must know and comply with your agency's internal policies and procedures. (Ref. N.D.A.C. 4-12-03-04)

2.2 Ethics

As procurement officer, you represent the state. Maintain courteous, professional relationships with all vendors, and avoid any activities, relationships, and communications that in any way diminish, or appear to diminish, fair and impartial treatment of vendors. Strive to ensure needed commodities and services will be available at the time, place, quantity, and price consistent with the needs of the requestor. But do not hesitate to advise the requestor if some aspect of the purchase request is not possible or is inconsistent with state procurement practices.

All public employees and vendors involved in the state procurement process must comply with N.D.A.C. Chapter 4-12-04 related to ethics in public procurement related to:

- Good faith actions (ref. N.D.A.C. 4-12-04-01)
- Emphasis on competition (ref. N.D.A.C. 4-12-04-02).
- Handling of Information (ref. N.D.A.C. 4-12-04-03). Avoid giving information to a prospective bidder or offeror that might give that vendor an unfair advantage. Handle public and confidential information according to state open records laws. For additional information, visit the Office of the Attorney General's website at <http://www.ag.state.nd.us/OpenRecords/ORM.htm>.
- Conflict of Interest (ref. N.D.A.C. 4-12-04-04). Avoid even the appearance of a conflict of interest. A conflict of interest occurs when an individual has a personal interest and a job responsibility, and a clear possibility exists that there may be a conflict between the two. For example, you need to purchase a piece of equipment, and a family member sells that type of equipment. Have another employee make the purchase in question to avoid an actual or potential conflict of interest. Contact your agency's lead procurement officer if you have a potential conflict of interest.
- Attempt to Influence (ref. N.D.A.C. 4-12-04-05). Attempts to influence procurement decisions are prohibited. Report to the OMB state procurement manager anyone that tries to influence a procurement decision or offers anything of value that might influence or appear to influence procurement. You may accept items of nominal value offered by a vendor as a gesture of goodwill or for public relations purposes (e.g. coffee mug, pen, samples). Refuse anything that exceeds a nominal value or will lead to subsequent noncompetitive purchases (e.g. an offer of free equipment contingent upon future purchases of supplies.)
- Collusion of bidders or offerors (ref. N.D.A.C. 4-12-04-06). Collusion is a secret agreement between two or more vendors to circumvent laws and rules regarding competitive bidding, commonly called "price fixing." For example, two vendors may agree to take turns submitting the lowest priced bid for a commodity or service. Report suspected collusion to the OMB state procurement manager.
- Nondiscrimination in Source Selection (ref. N.D.A.C. 4-12-04-06)
- Artificial Fragmentation Prohibited (ref. N.D.A.C. 4-12-04-07). See Section 5.4.

2.3 Violations

If you violate procurement laws, rules, or OMB directives, regardless of the cause, report the violation to your agency's procurement section. Any procurement violations reported to or discovered by the OMB State Procurement Office will be reported to employing agency for appropriate disciplinary action. A violation of state laws, rules, and OMB directives may constitute action outside the employee's scope of employment. If you act outside the scope of your employment, you could incur personal liability and you may not be indemnified by the state if you are sued. (Ref. N.D.A.C. 4-12-01-06.)

Chapter 3: Exemptions and Emergency Purchases

3.1 Exemptions

Certain commodities and services are exempt from the state procurement laws and rules. If you need to acquire commodities or services that fall into these categories, contact your agency's procurement section for assistance.

The following commodities and services are exemptions listed in N.D.C.C. 54-44.4-02:

1. Land, building, space, or the rental thereof. [Note: Leases for office space off the Capitol Grounds must be reviewed by the Office of the Attorney General and approved by OMB Facility Management, ref. N.D.C.C. § 54-21-24.1 and OMB Fiscal Policy 109.]
2. Telephone and telegraph service, electrical light, and power services.
3. Public books, maps, periodicals, and technical pamphlets.
4. Department of transportation materials, equipment, and supplies in accordance with N.D.C.C. 24-02-16.
5. Procurements through a contract or other instrument executed by the industrial commission under chapter 54-17.5.
6. Services for the maintenance or servicing of equipment by the manufacturer or authorized servicing agency of that equipment when the maintenance or servicing can best be performed by the manufacturer or authorized service agent, or when such a contract would otherwise be advantageous to the state.
7. Emergency purchases. See Section 3.2 of this chapter for procedures.
8. Commodities and services costing less than a specified amount as determined by written directive by the Director of OMB.
9. Specific commodities and services as determined by written directive by the Director of OMB.
10. Employee benefit services, trust-related services, and investment management services obtained by an agency with a fiduciary responsibility regarding those services.

The following commodities and services are exemptions listed in N.D.A.C. 4-12-01-04:

1. Contracts for services of legal counsel with attorneys who are not employed by the state, pursuant to N.D.C.C. § 54-12-08.
2. Contracts for public buildings and public improvement contract bids, pursuant to N.D.C.C. Title 48.
3. Contracts for architect, engineer, and land surveying services pursuant to N.D.C.C. § 54-44.7.

4. Contracts for concessions, pursuant to N.D.C.C. § 48-09.
5. Grant programs; this does not include procurements using grant dollars.
6. Professional memberships.

3.2 Emergency Procurements

Emergency procurements are defined in N.D.C.C. § 54-44.4-02 (7) as purchases that the Office of Management and Budget (State Procurement Office) cannot make within the required time that involve public health or public safety, or where immediate expenditures are necessary for repairs of state property to protect it against further loss or damage, or to prevent or minimize serious disruption in state services.

Emergency purchases must be made with the level of competition practicable under the circumstances, and a written determination of the basis for the emergency and for the selection of the particular contractor must be included in the contract file. An emergency determination must be made by a responsible agency official and promptly forwarded to the state procurement office after the procurement (ref. N.D.A.C. 4-12-09-04). Use the Emergency Purchase Determination form, SFN 51627, found on the State OMB State Procurement Office website at <http://www.state.nd.us/csd/spo/agency-forms.html>.

Sometimes commodities or services are needed immediately due to an unexpected requirement or poor planning, but the circumstance is not an “emergency” as defined in law. Contact your agency’s procurement section to request approval to deviate from procurement procedures to expedite the purchase using the Limited Competitive and Noncompetitive Procurement Request form, SFN 51403 available on the OMB State Procurement Office website at <http://www.state.nd.us/csd/spo/agency-forms.html>.

Chapter 4: Existing Sources, Approvals and Restrictions

4.1 Existing Sources

You can purchase from existing state sources of supply, state agencies and other governmental entities without obtaining competition, regardless of the dollar amount. Some of these sources are mandatory. (Ref. N.D.A.C. 4-12-02-02 and 4-12-15-01)

1. Inventory. Some agencies and institutions maintain supply rooms or inventories. Contact your agency’s procurement section to learn about existing inventory.
2. Central Supply. Central Supply is located in the Capitol Building in Bismarck, and it offers a large inventory of general office supplies and paper products. Central Services provides free delivery to customers within the Capitol complex, and will ship (freight collect) to agencies and institutions anywhere in the state. Contact Central Supply at 701-328-3346 or visit their website at www.state.nd.us/csd/supply/.
3. State Surplus Property. State Surplus Property is located in Bismarck, and it is a distribution and disposal operation for items that are excess, surplus, or obsolete to the state and federal government. Contact State Surplus Property at 701-328-9666 or visit their website at www.state.nd.us/csd/surplus/.
4. Central Duplicating Services. Central Duplicating Services is a centralized printing facility, located in the Capitol Building in Bismarck, that provides state agencies and institutions with economical and efficient printing and duplicating services, bindery

services, technical advice, layout assistance, graphics design services, forms design, and mainframe printing. Central Duplicating Services cannot print or duplicate the following: coated stock, continuous forms, snap-out forms, envelopes over twenty thousand, process color, paper larger than eleven inches/27.94 centimeters by seventeen inches/43.19 centimeters (ref. N.D.C.C. § 46-02-20). Contact Central Duplicating at 701-328-2772 or visit their website at www.state.nd.us/csd/duplicating/.

5. State Term Contracts. The OMB State Procurement Office establishes term contracts for commodities and services commonly used by state agencies and institutions. Agencies and institutions are required to purchase from state term contracts, unless the contract states otherwise. You must contact your agency's procurement section to request approval from the OMB State Procurement Office before purchasing a commodity or service on a mandatory state term contract from a vendor other than the contractor. The request must be in writing and include justification. Contact the OMB State Procurement Office at 701-328-2683 or visit their website at www.state.nd.us/csd/spo/.

6. Rough Rider Industries. Rough Rider Industries is located in Bismarck, and it is a state-owned industry that manufactures quality wood and metal furniture, a full line of seating, and signs. They also refurbish office partitions and operate a sewing industry. Contact Rough Rider Industries at 701-328-6165 or 800-732-0557 or visit their website at www.roughriderindustries.com.

7. Office Partition Inventory. Rough Rider Industries manages the states central inventory of surplus office partitions, including panels, work surfaces, and related components. These components can be purchased "as is" or refurbished. Contact Rough Rider Industries at 701-328-6165 or 800-732-0557 or visit their website at www.roughriderindustries.com.

8. Information Technology Department. Information Technology Department (ITD) provides a variety of information technology services, including programming, software development, and website development. Contact ITD at 701-328-3190 or visit their website at www.state.nd.us/itd.

4.2 Required Approvals and Restrictions

Certain commodities and services have approval requirements or purchase restrictions imposed by a regulatory agency. Contact your agency's procurement section for guidance regarding required approvals and restrictions.

1. Computer Hardware, Software, and Services. Information Technology Department must approve all requests for hardware, software, and services over \$25,000, not on state term contracts. Contact ITD Planning Division at 701-328-1992 or visit their website at <http://www.state.nd.us/itd/planning/tech.html>.

2. Fire and Tornado Insurance. State property must be insured with North Dakota Department of Insurance, Fire and Tornado Fund (ref. N.D.C.C. § 26.1-22-05). The State Fire and Tornado fund provides affordable building and business personal property insurance coverage to state entities and political subdivisions. Obtain information about coverage, rates, and filing claims by contacting State Fire and Tornado Fund at 701-328-9600 or visit their website at <http://www.state.nd.us/ndins/programs/>.

3. Flood Insurance. The National Flood Insurance Program (NFIP) underwrites all flood insurance policies, regardless of the company. Flood insurance may be purchased directly from any licensed property insurance agent. Flood insurance purchased above the NFIP coverage limits must use state procurement procedures. The State NFIP Coordinator, Office of the State Engineer, can assist in evaluating whether an organization should obtain flood insurance, provide information about NFIP flood hazard mapping and other related NFIP information. Contact the State NFIP Coordinator at 701-328-4898 or visit their website, <http://www.swc.state.nd.us/projects/fldpln.html>.
4. Liability Insurance. The Risk Management Fund provides tort liability coverage for the State and state employees acting within the scope of their employment up to \$250,000 per person and \$1 million per occurrence (ref. N.D.C.C. Chapter 32-12.2). OMB, through the Risk Management Fund, is given the authority to decide which state agencies may purchase liability insurance. The Director of the OMB must authorize, in writing, all liability insurance purchased on behalf of the State. Contact OMB Risk Management at 701-328-7584 or visit their website at <http://www.state.nd.us/risk>.
5. Microfilm Equipment and Services. Information Technology Department must approve purchase requests over \$1,000 (ref. N.D.C.C. § 54-46.1-05). Contact ITD Records Management Division with approval requests at 701-328-2990.
6. Motor Vehicles. State Fleet Services, a division of the North Dakota Department of Transportation, must purchase or lease motor vehicles for state agencies (ref. N.D.C.C. § 24-02-03.3). State Fleet Services also operates the State Motor Pool locations throughout the state. Contact State Fleet Services at 701-328-2543 or visit their website at <http://www.state.nd.us/dot/>. Also see N.D.C.C. § 39-22-25 related to a prohibition of direct manufacturer sales of motor vehicles.
7. Postage Meters. Office of Management and Budget, Facility Management Division, must approve the lease or rent of all postage meters by all state agencies and institutions. Agencies must also submit an annual report identifying the total postage used during the calendar year (ref. N.D.C.C. § 54-06-18 and OMB Fiscal Policy 111, <http://www.state.nd.us/fiscal/docs/policies.pdf>). Contact OMB Facility Management at 701-328-2481 to request approval.
8. Printing. All printing over \$2,500, not done by Central Duplicating Services, must be requisitioned through the OMB State Procurement Office. See OMB Guidelines for Procurement of Printing, <http://www.state.nd.us/csd/spo/resources.html>.
9. Refreshments. Coffee and soft drinks for state employees during staff meetings cannot be purchased with state funds. Refreshments are permitted for meetings to inform and train the public, interested parties, consultants, etc. See OMB Policy 515, <http://www.state.nd.us/fiscal/docs/policies.pdf>.
10. Telecommunication Equipment and Services. All telecommunication equipment and services must be purchased through ITD, Telecommunications Division, including all telephones and telephone systems (other than cellular phones), automated attendant systems, call sequencers, lines, circuits, all data communication equipment and services, including but not limited to routers, switches, data circuits, (ref. N.D.C.C. § 54-49-05). Request telecommunications equipment or services by submitting an on-line service request on the ITD website at www.nd.us/itd or contact ITD Telecommunications at 701-328-1002.

4.3 General Services Administration (GSA) Contracts and Contracts of Other Government Entities

On occasion, needed commodities and services may be available through a GSA contract or from another government entity's contract. Purchasing from another entity's contract in lieu of a competitive procurement process is a type of cooperative purchase called "piggy-backing." In some instances, the state may need to sign a cooperative purchase agreement or pay fees to use the other government entity's contract. OMB State Procurement Office must make a determination that use of another entity's contract is in the best interest of the state [ref. N.D.C.C. § 54-44.4-05 (3), N.D.A.C. 4-12-02-02].

Contact your agency's procurement section to request approval using OMB State Procurement Limited Competitive and Noncompetitive Purchases Request form, SFN 51403. The request must include a copy of the GSA or other government entity's contract, and provide evidence that the other government entity permits "piggy-backing" from the contract.

Chapter 5: Fundamentals of State Procurement

When needed commodities or services cannot be obtained from an existing source or a government entity, state procurement procedures must be used. It is a state policy that each state agency and institution obtain necessary commodities and services at a competitive cost, consistent with quality, time, and performance requirements with fair and equal opportunity to all persons qualified to sell to the state, except as otherwise provided by law (ref. N.D.C.C. § 54-44.4-01). These procedures are not intended to restrict the effectiveness of individuals involved in the procurement, but to provide for legal, complete, and consistent consideration of all aspects of the procurement process.

5.1 Determine the Level of Competition Required

The level of competition you are required to obtain is determined by the total dollar value of the commodities or services that need to be purchased.

- Purchases \$2,500 and below. Use adequate procedures to ensure commodities and services are obtained at a fair and reasonable price, which may include the solicitation of only one oral or written informal bid or proposal. Rotate vendors solicited on an equitable basis. (Ref. N.D.A.C. 4-12-08-02). You may base "fair and reasonable" price on information including previous purchases, market research, a published price list, or by simply soliciting more than one vendor. Remember, "When in doubt, bid it out." Use the state purchasing card to reduce the administrative costs of purchasing. See the OMB Purchasing Card Users Manual on the OMB Fiscal Division website at www.state.nd.us/fiscal.
- Purchases \$2,501 to \$25,000. Solicit no less than three vendors, insofar as practical, to submit oral or written informal bids or proposals. If you do not solicit three vendors, provide a written justification (e.g. "Only two known vendors" or "Contacted three vendors, only two responded").
- Purchases over \$25,000. Solicit formal sealed bids or proposals in accordance with N.D.A.C. Chapter 4-12-08 and OMB State Procurement Office guidelines.

5.2 Documentation Requirements

You must create a record for each purchase transaction that adequately documents the procurement process for audit and public record purposes. If the purchase is over \$2,500, you must document that three vendors were solicited or provide a written explanation that three vendors were not available.

Documentation should include any required approvals, telephone bid sheet or written solicitation, list of bidders solicited and responses received, bid summary or evaluation worksheets, reasons for not accepting a particular bid, and method of award (purchase order/purchasing card transaction). Written determinations are required for all emergency, limited competitive and noncompetitive procurements. See the OMB Purchasing Card Users Manual for documentation requirements when using a purchasing card.

5.3 Methods of Competition

There are two methods of competition, formal (sealed) and informal (unsealed). Both methods foster open competition, offer fairness and impartiality to vendors, and are intended to obtain the most economical commodities and services meeting the needs of the state.

- Formal (sealed) competition requires the purchasing agency to notify vendors on the state bidders list, and vendors are required to provide their responses in a prescribed format in a sealed envelope at a specified time and place.
- Informal competition or “small purchase” procedures are used for low dollar purchases that do not justify the time and expense of a formal process. The purchasing agency is not required to notify all vendors on the state bidders list or strictly adhere to an opening date. Vendors may be solicited to respond by letter, telephone, fax, or electronically.

5.4 Determine the Estimated Purchase Price

When planning a purchase, you must determine the total estimated purchase price of the needed commodities or services. The estimated price is needed to verify that adequate funds are available, determine what level of competitive is required, and ensure you have delegated purchase authority to make the purchase. Estimated price may be based upon previous purchases, market research, a published price list, or asking a vendor for a budgetary estimate. When determining an estimated price, consider the following:

- Commodities: The entire amount of the purchase price including all shipping and handling, and all other related charges, such as installation or maintenance agreements. Generally, shipping costs can be estimated at 15%.
- Leases: The entire amount of an equipment lease is based upon all payments (including interest) over the lease term, including any options for extension or renewals. For example, the total cost of a copier lease with payments of \$270 per month over a 24-month period is \$6,480.
- Services: The entire amount of a service contract includes the initial term and all possible extension or renewal options. For example, the value of a one-year contract estimated at \$2,500 per year with three renewal options is \$10,000.

When estimating prices for services, a helpful resource is the Labor Market Information Center, sponsored by Job Service of North Dakota, which provides current information about wages and salaries for various occupations. Call 701-328-2868 or visit their website at <http://www.state.nd.us/jsnd/bin/lmidata.pl/wage>.

5.5 Artificial Fragmentation Prohibited

Procurement requirements may not be artificially divided as to constitute a small purchase [ref. N.D.C.C. 54-44.4-11 (3)]. Artificial fragmentation means splitting purchase requirements or splitting an invoice to stay below a certain dollar level to avoid competition or stay within your delegated authority limits.

In deciding whether it is artificial or natural to split a requirement, use the following guidelines:

- **Similar Products**: Consolidate similar products that can be purchased from one type of vendor whenever possible. Use commodity codes as a guide (e.g. Hand Tools, Commodity Code Class 445, includes subclasses 03 – axes, 12 – caulking guns, 27 – powered drills, and 64 screwdrivers).
- **Urgency**: Commodities and services needed urgently may be separated from those with routine priority.
- **Predictability**: When commodities and services are needed on a frequent or reoccurring basis, you should consider consolidating requirements for a periodic purchase or term contract. (i.e. you buy the same items every week or every month and store them for use later.) Contact your agency procurement section for assistance.

5.6 Term Contracts

If you need a commodity or service on a reoccurring basis, consider establishing a term contract. Term contracts establish a contractor for a commodity or service for a specific time at a specified price. Term contracts help save time and money through leveraged volumes, quality standards, improved delivery time, and avoiding repetitive bids. The term contract needs to specify the term and any options for extensions or renewals and price adjustments.

Fair treatment of vendors necessitates that contracts be routinely rebid. Most term contracts are one-year with an option for a one-year renewal. Generally, term contracts are no more than four years (including all renewals and extensions). The appropriate contract term varies on a case-by-case basis considering factors such as the type of commodity or service, availability of competition, complexity, market volatility/price fluctuations, costs associated with switching contractors, etc. If the contract crosses a biennium, include a termination clause for non-appropriation. Contact your agency's procurement section when establishing a term contract.

5.7 Types of Solicitations

After you have defined your requirements, you'll need to select the appropriate type of solicitation for the needed commodity or service. A solicitation is the document used to process of notifying vendors of the procurement opportunity

- **Competitive Bidding**. Award is made to the responsible bidder whose bid is responsive to the specifications and other requirements of the solicitation. Bids received become public records upon opening. (Ref. N.D.C.C. § 54-444.4-04). The formal solicitation is an Invitation for Bids (IFB), and the informal solicitation is a Request for Quotes (RFQ). Competitive bidding is appropriate for most commodities and non-professional services (e.g. janitorial or lawn maintenance).
- **Competitive Proposals**. Award is made to the responsible offeror whose proposal is determined to be most advantageous, based cost and the other evaluation criteria

(e.g. experience, quality of the solution). The relative weight of cost and any other evaluation criteria must be stated in the solicitation. Discussion, negotiations, and best and final offers may be requested. Proposals do not become public records until after an award is made. (Ref. N.D.C.C. § 54-44.4-10). The formal solicitation is called a Request for Proposals (RFP), and the informal solicitation is an “Informal Request for Proposals.” Competitive proposals are appropriate when procuring professional services when the qualifications and experience of the individual rendering the service are of primary importance. Use RFPs when procuring equipment and information technology to select the best equipment or technology for the price.

- Multi-step Solicitations. If it is not practical to prepare a purchase description that is suitable for award, you can use a multi-step solicitation. An initial solicitation is used to develop a short-list of qualified vendors and a subsequent solicitation may be limited only to those vendors that qualified. (See N.D.A.C. 4-12-08-05.)
- Request for Information (RFI). An RFI is a noncompetitive solicitation issued before a solicitation for bids, proposals, or a multi-step solicitation to obtain information, data, comments, or reactions from possible vendors. (See N.D.A.C. 4-12-06-7).

Contact your agency’s procurement section for assistance in selecting the type of solicitation.

5.8 Develop Specifications for the Needed Commodity or Services

A specification is a description of all required physical, design, performance, functional and other characteristics of a needed commodity or service the purchasing agency requires and consequently, what a bidder or offeror must provide to be considered for award [N.D.C.C. § 54-44.4-06(1)]. Well-written specifications ensure the state obtains commodities and services that meet quality, performance, and delivery requirements at an economical price. When writing specifications, consider:

- Value to the Taxpayer. Ensure commodities and services are specified at the proper level of utility and quality for the purpose intended in order to promote overall economy for the purpose intended (ref. N.D.A.C. 4-12-06-02).
- Quality. When writing specifications, keep in mind that specifications establish the minimum requirements upon which the award will be based. Therefore, the desired quality of the commodity must be written into the specifications. Quality is measurable. Establish requirements for the product or service being requested (e.g. minimum performance requirements, experience levels, etc.). You can only consider commodities or service providers that meet the minimum requirements stated in the specification.
- Specifications Prepared by Non-State Personnel. When a purchasing agency has specifications prepared by someone other than a state employee or official on behalf of the state, that person or business entity must be excluded from submitting bids or proposals (N.D.A.C. 4-12-06-06).
- Restrictive Specifications. Specifications should encourage competition, and may not be restrictive (N.D.A.C. 4-12-06-02). A specification is restrictive when the specifications, requirements, or conditions have the effect of limiting responses to only one brand, make, source or service provider and have no reasonable relation to the actual needs of the purchasing agency. If you suspect a specification is restrictive, work with the requestor to rewrite the specifications.

5.9 Limited Competitive and Noncompetitive Procurements

Competition is limited when a fully competitive process is not possible because the purchasing agency has a legitimate need that can only be met by specific products or specific vendors or a deviation from the procurement process is in the best interest of the State. A purchase is noncompetitive when the needed commodity or service is only available from one source, and competition is not possible. Contact your agency's procurement section to request a limited competitive or noncompetitive purchase using the OMB State Procurement Office Limited Competitive and Noncompetitive Procurement Request form, SFN 51403 available on the OMB State Procurement Office website at <http://www.state.nd.us/csd/spo/agency-forms.html>.

5.10 North Dakota Preference Laws

The term "preference" as it relates to government purchasing is an advantage in consideration for award of a contract given to particular types of vendors. In North Dakota, the preference given to a resident North Dakota bidder will be equal to the preference given or required by the state of the nonresident bidder (ref. N.D.C.C. § 44-08-01). This preference, commonly called a "reciprocal preference" must be applied when evaluating the costs of bids or proposals received from nonresident (out-of-state) vendors. A "resident" North Dakota bidder, offeror, seller, or contractor is one who has maintained a bona fide place of business within North Dakota for at least one year prior to the date on which a contract was awarded (ref. N.D.C.C. § 44-08-02). This preference law applies to state entities and the governing body of any political subdivision when purchasing any goods, equipment, professional services, and building or repairs.

When evaluating bids or proposals, you must determine whether the nonresident vendor's state of residence has a preference law for vendors resident in that state. If the nonresident vendor's state has a preference law, the cost proposal of the nonresident vendor will be increased by the same percentage of preference given to vendors resident in that state.

For example, the state laws of a nonresident bidder require a 5% preference for vendors resident in that state, so the ND procurement officer must increase that bidder's cost proposal by 5% before evaluating it.

No reciprocal preference is applied to the price offered by a nonresident bidder whose state of residence has no preference laws or a reciprocal preference law. If all bids or proposals received are from nonresident vendors, no preference is applied.

Visit the OMB State Procurement Office website for a list of state preference laws at <http://www.state.nd.us/csd/spo/resources.html>.

North Dakota also has preference laws related to particular commodities and services:

- Coal. When purchasing coal, state agencies and institutions must comply N.D.C.C. § 8-05-02.1 which describes how to apply preference for bidders supplying coal mined in North Dakota.
- Highway Construction Stakes. Contracts for highway construction stakes must be awarded to North Dakota work activity centers for the developmentally disabled, unless no work activity center bids on the contract. See N.D.C.C. § 25-16.2-02.

- Printing. If you are soliciting printing, state law requires that printing be done in North Dakota whenever practicable. If you solicit quotes for printing from nonresident printers, document the reason. See N.D.C.C. § 46-02-15 and N.D.A.C. 4-12-16-01.
- Soybean-based ink. State agencies and institutions of Higher Education are encouraged to use soybean-based ink when purchasing newsprint printing (ref. N.D.C.C. 54-44.4-07).

Contact your agency's procurement section or the OMB State Procurement Office at 701-328-1726 for assistance in applying state preference laws.

5.11 Specifications for Commodities

There are many ways to write specifications for commodities. Consider the complexity of the commodity or service needed and how you want to evaluate responses to select the appropriate type of specification.

- Brand-Name-or-Equal Specification. A specification can include a brand name if the solicitation clearly indicates that equivalent products may be acceptable. The specification will include one or more brands and model number of acceptable products and invite vendors to offer comparable products by stating, "or equal," or "similar to." If a vendor offers an equivalent brand and you reject it, you must make a written determination that explains the reasons for the rejection and notify the vendor. (ref. N.D.C.C. § 44-08-01, N.D.A.C. 4-12-06-03).
- Design Specification. A design specification includes a description of physical requirements, dimensions, and construction or fabrication of an item. A well-meaning writer can inadvertently write a design specification around a particular manufacturer's design that may prevent consideration of another (potentially lower-priced) product using a different design.
- Performance Specification. A performance specification description of the required functionality and performance of the needed product or equipment. Offered products are evaluated on their ability to perform, endurance, and ownership costs. Competitive proposals are normally used with performance specifications, so award can be based upon cost, function, and performance.
- Qualified Products List. If testing or examination of the commodities or services is desirable or necessary before or during the solicitation process, you can develop a qualified products list. Contact your agency procurement section to obtain prior approval from the State Procurement Office (ref. N.D.A.C. 4-12-06-04).
- Samples and Technical Data. It can be very difficult to write specifications for some commodities (e.g. cleaning products). A specification can provide a general description of needed items and ask vendors to furnish product samples, technical data, and prices. The solicitation must describe how samples will be evaluated and compared (e.g. laboratory or performance tests, or cost-effective basis using competitive proposals). See N.D.A.C. 4-12-08-11.

Here is a sample format of a specification for commodities:

- Name of the commodity. State a generic description of the item needed, such as "mower, walk-behind."

- Purpose or intended use. State how the item will be used, such as “suitable for daily use on a public complex with a large grounds.”
- Detailed Description. List all the needed features, physical requirements, and performance capabilities. If the description of the needed goods includes the name of a particular brand or manufacturer, you must also invite vendors to offer comparable products by stating, “or equal,” or “similar to.”
- List special requirements. Describe any special requirements, such as installation, training, service requirements, or warranty provisions. Describe any equipment being offered in trade and ask for a trade-in allowance. If specifying used equipment, require an inspection. State any requirements for bidders to supply samples, furnish technical data, or provide demonstrations.

5.12 Commodities that Require Special Procedures

Certain commodities and services have approval requirements or purchase restrictions imposed by a regulatory agency. Contact your agency’s procurement section for guidance regarding required approvals and restrictions.

1. Copiers and Multi-functional Printers (Purchase, Lease, or Lease-purchase). Use the Digital Copier Specification Survey, SFN 53162, on the OMB State Procurement Office website at: <http://www.state.nd.us/csd/spo/agency-forms.html>.
2. Equipment. Equipment valued at \$5,000 must be reported as fixed assets under N.D.C.C. § 54-27-21. Contact your agency’s asset manager.
3. Leased or Leased-Purchases Equipment. When leasing or lease-purchasing equipment, the specification must include the term of the lease, and any provisions for extension or renewal. State law requires a lease vs. purchase analysis. Visit the OMB Fiscal website for forms and instructions at <http://www.state.nd.us/fiscal/>. If leasing heavy equipment, such as a motor grader, consider requesting property insurance from the vendor in the solicitation. Notify State Fire and Tornado if leased equipment will be covered under that fund. Before you sign the lease agreement, have it reviewed by your agency’s assistant attorney general or special assistant attorney general. Contact your agency’s asset manager to determine if the leased equipment needs to be capitalized. See N.D.C.C. § 54-27-21.1 and N.D.A.C. 4-12-06-05.
4. Printing. See the OMB State Procurement Office Guidelines for Procurement of Printing. All printing over \$2,500, not done by Central Duplicating Services, must be requisitioned through the OMB State Procurement Office. This does not prevent you from entering into a service contract that requires the contractor to furnish all labor and printed materials for a project (e.g. contract to design, print, and mail brochures. When soliciting bids for printing, state law requires that any printing not done by OMB Central Duplicating Services must be printed in North Dakota whenever practicable. (Ref. N.D.C.C. 46-02-09, N.D.A.C. 4-12-16-01).

5. Recycled Paper Products. State law requires that at least sixty percent of the total volume of paper and paper products being purchased contain at least twenty-five percent recycled material. Request information on the percentage of recycled paper content when soliciting paper products. See N.D.C.C. § 54-44.4-07, 54-44.4-08, <http://www.state.nd.us/lr/cencode/t54c444.pdf>.
6. Trade-In Equipment. When replacing equipment, you may trade-in your existing equipment. The specifications need to include detailed information about the equipment being offered. If possible, allow vendors an opportunity to inspect the equipment. Request prices with and without trade-in and provide that award may be made either way. Compare the trade-in offers with the estimated outright sale price to determine which is most advantageous. Contact OMB State Surplus Property at 701-328-9666 for assistance in estimating the sale price. If the equipment is capitalized, coordinate the trade-in with your agency's asset manager. Contact your agency's procurement section guidance.
7. Used Equipment. On occasion, it is advantageous to purchase used equipment. When specifying used equipment, evaluation criteria should allow consideration of factors such as age, condition, mileage, and require inspection or testing before award. If only one source for the used equipment can be found or the used equipment available only on short notice, contact your procurement section to request approval using OMB State Procurement Office Limited Competition and Noncompetitive Procurement Request, SFN 51403.

5.13 Independent Contractor vs. Employee

The State cannot hire employees through the procurement process. However, the procurement process may be used to acquire the services of an independent contractor. If the services required result in an employer/employee relationship, hire the person through the personnel system, not the procurement system.

1. The following conditions are indicators that an employer/employee relationship may exist:
 - The person is subject to the control of the State, not only as to what will be done but when, where, and how it will be done as opposed to allowing the individual to set their own work schedule. It is not necessary that the State actually direct or control the manners in which services are performed, it is only necessary the State has the right to do so.
 - The State has the right to discharge the person or the person has the right to terminate services without incurring liability.
 - The State furnishes the tools, equipment, and a place to work for the individual performing the services.
 - The individual currently works for the State as an employee in the same field as the contract services.
 - It is expected that the State will hire this individual as an employee immediately following termination of the contract.
 - The individual has had an official state appointment (including temporary) to provide the same or similar services during the 12 months prior to the date the services are to commence.
 - The State currently pays employees to perform essentially the same duties to be performed by the contractor.
2. The following conditions are indicators that people are independent contractors:

- They are subject to control or direction of the State only as to the result to be accomplished and the work to be done, not as to the means and methods for accomplishing the result.
 - They are in business providing a service to the public from which they may derive a profit or suffer a loss.
 - They are in business to provide the same or similar services to other entities or the general public.
3. Temporary Employment Contracts. Temporary employment agencies are independent contractors that are in the business of providing staffing services to public and private employers. The occasional use of temporary employment contracts to meet short-term staffing needs does not create an employer/employee relationship, since the workers are employed by the temporary employment agency, not by the State. Examples of temporary employment contracts include: coverage for an employee out on medical leave; cleaning up a backlog of data entry; and working on a short-term project. Typically, a temporary employment contract is used when an additional staff person is needed for 1000 hours or less.

Contact your agency's procurement section for assistance in making an independent contractor verification. For more information visit the North Dakota Department of Labor website at <http://www.state.nd.us/labor/services/ic-verification/>.

5.14 Type of Services Needed

Consider the type of services needed when selecting the type of solicitation. The National Association of Procurement Officials State and Local Government Purchasing Principles and Practices (NASPO, 2001) identifies six basic classes of contractual services:

- Professional Services. Professional services require special knowledge, education, or skills when the qualifications and experience of the individual rendering the service are of primary importance and the individual is required to exercise professional judgment [N.D.C.C. § 54-44.4-01 (3)]. Examples include accountants, physicians, and consultants. These services are procured using an RFP or multi-step competitive process.
- Support Services. Support services are nonprofessional services functions where the process is more important than the product, if any. Examples include janitorial and custodial services, security, and trash removal. Specifications can usually be written to allow award using competitive bidding.
- Personal Services. Personal services are unique, technical, or infrequent functions usually performed by an independent contractor. Examples include translation and editing. Competitive bidding can normally be used.
- Client Services. Client services are services contracted for by a jurisdiction on behalf of clients. Client services are more likely to involve not-for-profit contractors than other services. Examples of client services include vocational rehabilitation and counseling. RFPs or multi-step solicitations are normally used.
- Management Services. Management services are managerial/ministerial functions performed by an independent contractor assuming governance of the service delivery, property, and sometimes personnel of a government function (not

privatization). An example is management of a state facility. These services are procured using an RFP or RFPs or multi-step solicitations.

- Information-Technology (IT) Services. IT services are those services to furnish and operate high technology installations to perform complex programs. An example would be the implementation and management of a information management system. RFPs or multi-step solicitations are normally used.

5.15 Writing the Statement of Work

The detailed description of needed services is called the “statement of work.” Writing the statement of work is one of the most important steps in the preparing a solicitation for services—and the most difficult. Prospective service providers will use the statement of work to prepare a technical proposal and cost proposal. The agency will then use the statement of work to evaluate those bids or proposals, select a service provider, and ensure the service provider completes all the required work in a satisfactory manner. Here is a sample Statement of Work format [(The Contract Cookbook for Purchase of Services, 2nd Edition; John Short, NASPO (1990))]:

- Background Information. Help the service providers understand the mission of your agency or institution, explain the specific project for which services are being sought, and any additional explanations or historical information.
- Definitions. Clearly establish what is meant by all special terms and phrases
- State-Furnished Property/Services. List any resources the State will provide.
- Contractor-Furnished Property. State what is needed (function, type, quality, etc.), and allow the vendor to describe what they will furnish to meet that need. Avoid dictating requirements that may add unnecessary costs to the contract.
- Description of Specific, Results-Oriented Tasks. List all the essential tasks necessary to achieve the desired results or accomplish the stated mission. Be specific and as comprehensive as possible.
- Quality Assurance. Describe the standards or indicators that will be used to measure the quality and quantity of work to be performed. Describe how you will monitor the performance of the service provider during the contract. For example, indicate any progress points at which partial payments may be made, how work or progress will be evaluated, and what corrective measures will be taken if the work or progress does not meet the stated standards.
- Experience and Qualification Requirements. Describe any licenses, credentials, expertise, or experience required of the firm and individuals doing the work.
- Directives. List directives that may influence the contract. These may include federal or state laws or regulations, OSHA directives, federal rules and regulations concerning grants, and requirements for licenses or registration. Directives are normally too lengthy to include in the solicitation document. Instead, site the reference for the directive or attach as a technical exhibit.
- Deliverables. List every deliverable. Include everything that needs to be accomplished for the job to be finished, even items that seem insignificant. Do not assume that the contractor will give more than is requested.
- Technical Exhibits. Include any documents or additional information too lengthy to describe in the text.

5.16 Reporting Requirements for Services

State law requires each agencies and institution to file an annual report with OMB regarding the services they purchased during the preceding year (N.D.C.C. § 54-44.4-02.1). The report must be filed before March first of each year and include all services over \$2,500. Use the Report of Services form, SFN 52968 available on the OMB State Procurement Office website at <http://www.state.nd.us/csd/spo/agency-forms.html> or an approved agency form. Contact your agency's procurement section for guidance on reporting services.

Chapter 6: Planning the Contract

6.1 Planning the Contract

Planning the contract before issuing a solicitation is very important. The solicitation will result in the selection of a vendor with whom the State will enter into a formal, written contract. The solicitation must contain all the terms and conditions that will be incorporated into the final contract.

- **Purchase Order.** A purchase order may be issued as a contract for commodities or simple, low dollar services provided it adequately describes the service to be performed. Since a purchase order does not contain adequate space to describe all the elements of a service contract, the terms and conditions of the solicitation must be incorporated into the purchase order by reference. To do this, simply type the following language on the purchase order, "The attached terms and conditions of (Solicitation Type, Number, and Date) are incorporated and made part of this purchase order by reference."
- **Contract.** A contract will be issued for most service contracts and term contracts. Use the Office of the Attorney General's sample contract contained in the Contract and Review Manual found on the Attorney General's website to create a contract appropriate for the commodity or service being procured. Be sure to have the agency's legal counsel review any changes to the standard clauses.

The purchase order or contract must describe the legal names of the parties involved, what is to be delivered, the time frame in which the product or service must be delivered, the responsibilities of the parties, and protection for the State's interests. Consider the scope, value and risk of the requested services to select contract provisions relevant to the contract being contemplated, such as:

- Contractual terms and Conditions
- Non-appropriation clause if contract terms extend beyond current biennium.
- The contract term (duration) and any provisions for renewals and extensions.
- Any provisions for price adjustments
- Indemnification and insurance requirements
- Bonding Requirements (e.g. bid bonds, performance bonds)
- Performance incentives
- Remedies for breach of contract (e.g. liquidated damages, deductions, etc.)

Visit the OMB State Procurement Office website for solicitation templates. Consult your agency's legal counsel if you make any changes to the standard terms and conditions.

6.2 Insurance Requirements

Contractual risk is based upon circumstances, not the dollar value of the purchase. For example, a contract to clean the windows on the 18th floor of the Capitol might be nominal in cost, but involve substantial potential risk. Use the OMB Guidelines to Managing Contractual Risk to determine what type of indemnification and insurance provisions to require. <http://www.state.nd.us/csd/spo/resources.html>

6.3 Secretary of State Registration Requirements

Requirements for the vendor to register with the North Dakota Secretary of State are also dependent upon the circumstances of the procurement, not the dollar value. Review the OMB Guidelines to Vendor Registration to determine if registration is required. <http://www.state.nd.us/csd/spo/resources.html>

6.4 North Dakota Contractors, Professional and Occupational Licenses

Certain types of businesses and individuals in certain professions or occupations are subject to registration with a state regulatory board or agency. Include any licensing requirements in your solicitation and contract. You should require the bidders or offerors to furnish a copy of the North Dakota license, permit, or registration in the solicitation or before award.

North Dakota law requires any person engage in the business or acting in the capacity of a contractor within this State to have a contractors license when the cost, value, or price per job exceeds the sum of two thousand dollars (ref. N.D.C.C. 43-07-02).

Visit the NDSU Extension Service website for a list of licenses required by the state, <http://www.ext.nodak.edu/extpubs/agecon/market/ec752w.htm>. Contact your legal council for questions regarding required licenses or permits.

Chapter 7: Small Purchase Procedures (\$0 – 25,000)**7.1 Identifying Potential Bidders**

After you have written your specifications and selected the type of solicitation, you must identify vendors that sell the needed commodity or service.

When making informal purchases up to \$25,000, you must solicit a minimum of three vendors. You can solicit more vendors, and you can also solicit state agencies that provide the needed commodity or service (ref. N.D.A.C. 4-12-15-01). In deciding the number of vendors to solicit, consider the following:

- Price: The higher the price, the more competition you should seek;
- Competition: The more vendors who can meet your need, the more competition you should seek;
- Mission requirements: Consider whether soliciting more vendors cause a delay that could hamper your mission.

You are not required to use the state bidders list, but you may find it helpful in identifying vendors that sell the commodities or services you need. Vendors on the state bidders list are registered with the North Dakota Secretary of State and set up on the state vendor database. You can access the state bidders list on the OMB State Procurement Office website at www.state.nd.us/csd/spo/.

7.2 Soliciting Informal Bids or Informal Proposals

You must decide whether you will solicit vendors in writing or orally. An oral process should only be used for simple purchases using a Request for Quote. Use written solicitations used for complex or lengthy requirements and informal RFPs. Informal RFPs must be written because the evaluation criteria must be included in the solicitation. Whether using an oral or written solicitation, provide the same information to all potential bidders at the same time to ensure fairness. Visit the OMB State Procurement Office website for informal solicitation templates at <http://www.state.nd.us/csd/spo/agency-info-page.htm>.

Written solicitation:

The solicitation document must describe the needed commodity or service, describe the type of response expected, and explain how the responses will be evaluated. Request for Quote and Informal Request for Proposal templates are available on the OMB State Procurement Office website. Customize the solicitation document for the commodity or services being procured. The written solicitation should include:

- **Contact Person.** Provide the name and contact information for the person vendors must contact if they have any questions or need clarification.
- **Response Instructions.** Describe how, when, and where vendors must respond. Give vendors adequate time to respond (N.D.A.C. 4-12-04-02).
- **Delivery Instructions and Terms of Sale.** Indicate the delivery location and state that the price offered by the vendor is to include all shipping, delivery, and handling charges in the pricing quoted. The OMB State Procurement Office recommends specifying F.O.B. Destination, Freight Prepaid, which requires the seller to own the commodities in transit, pay freight charges, and file any claims. Title passes to the state at the delivery destination.
- **Specifications of the needed commodity or service.** Provide all the information a vendor will require to prepare an accurate quotation or proposal. If a brand name is specified, vendors must be invited to offer competitive brands unless you have received approval for the limited competition determination (See SFN 51403 Alternate Procurement Form).
- **Required Delivery Date.** When commodities must be delivered or service must be performed. Indicate a specific date or time (days/weeks/months) after receipt of order (ARO). Expect higher prices if expedited delivery is required.
- **Evaluation Criteria.** If you issue a Request for Quote, award is made to the low bidder meeting specifications. If you issue an Informal Request for Proposal, you must include the relative weight of cost and all the factors and any subfactors that will be considered in making the award.

Verbal Solicitations

When soliciting oral bids, follow the same process described in a written quotation, but contact the vendor and recite the requirements instead of issuing a written document. Vendors will normally respond by telephone, unless you ask for a written response. When making an oral solicitation, document quotes received, including any vendors that declined to bid, using the Request for Telephone Quote form, SFN 2706, available on the OMB State Procurement Office website at www.state.nd.us/csd/spo/.

7.3 Clarifications or Amendments to the Solicitation

After the solicitation is issued, carefully consider any questions or criticisms raised by potential bidders or offerors in response to the solicitation. If you need to make a correction or modification, notify each vendor you solicited in the same manner as the original solicitation (oral or written).

7.4 Receiving Responses

Responses may be reviewed immediately. When responses are received from all vendors you solicited, the bids or proposals may be evaluated and an award made. Any vendors that do not respond by the deadline are nonresponsive. Do not allow any vendors to change their responses after the deadline.

Document all vendors solicited and their responses, including those that responded with a "no bid." If bids were solicited orally, document all responses received using the Request for Telephone Quote form, SFN 2706. If a written solicitation was used, prepare a summary of the bids or proposals received.

7.5 Evaluating Responses

When evaluating bids or proposals, you can only consider those requirements or evaluation criteria specifically stated in the solicitation. Contact your agency's procurement section for assistance in evaluating bid or proposals.

- Responsive and responsible bidder. A "responsible" bidder or offeror means a firm or person who is capable of performing the work. A "responsive" means a firm or person who submits an offer that conforms to the requirements of the solicitation. Typically a vendor is declared non-responsive because they failed to comply with your specifications or failed to submit a response by the deadline.
- Conformity with specifications and minimum requirements. Compare the offered products or service to the specifications and requirements stated in the solicitation. You cannot consider a vendor whose firm, bid or proposal did not meet a stated minimum requirement.
- Bids or Proposals from Out-of-state Vendors. If a response is received from an out-of-state-vendor, you must apply the reciprocal preference law (ref. North Dakota Century Code 44-08-01). Determine whether out-of-state bidder's state of residency has a preference law by consulting the "Reciprocal Preference Law" found on the State Procurement Office website at www.state.nd.us/csd/spo/. Increase the price of the out-of-state vendor's bid or proposal by the amount of preference, if any.
- Price Evaluation. After any adjustments to the price for reciprocal preference, determine the lowest priced, responsive bid or proposal. Be sure each vendor's total price includes all shipping, handling, and installation costs, if any. Discounts for prompt payment or cash discounts can only be considered if so stated in the solicitation. When evaluating proposals, the lowest priced proposal receives the maximum points for cost. Points for higher-priced proposals can be calculated:

$$\frac{\text{Price of Lowest Cost Proposal}}{\text{Price of Proposal Being Rated}} \times \text{Number of Points} = \text{Awarded Points}$$

- Discussions, Negotiations, and Best and Final Offers. No discussions or negotiations are permitted with competitive bidding. Any discussions, negotiations, or requests for best and final offers must be conducted using the rules for formal sealed proposals in N.D.A.C. 4-12-08-04 and 4-12-12.
- Compare all-or-none or split award. Unless the solicitation or a vendor's response stipulates that the offer is all-or-none will be made, you may make a split award or all-or-none award at your discretion. If purchase orders will be issued, you can consider administrative costs to determine whether a split award will be advantageous. Generally, the administrative cost to issue a purchase order is \$50.
- Tie Bids or Proposals. Contact your agency's procurement section if vendors offer equal prices or receive equal evaluation scores. The award must be made according to the N.D.A.C. 4-12-11-05.
- Only One Bid or Proposal Received. Attempt to find out why the competitive process failed by reviewing the specifications and other requirements of the solicitation. Contact your agency's procurement section for assistance. The situation must be handled in accordance with N.D.A.C. 4-12-11-08.

7.6 Making Award

After selecting the successful bidder or offeror, you must notify the vendor of the award using one of the following methods of contract award:

1. Purchasing Cards. Use purchasing cards whenever possible when making small purchases up to \$2,500. Guidelines for using the purchasing card are found in the OMB Purchasing Card Users Manual.
2. Purchase Orders. There are three types of state purchase orders, and you may use the form that best suits the purchasing situation:
 - a. On-Line Purchase Order. The state has an on-line purchase order system. Contact your agency's procurement section for authorization and training to use the on-line purchase order system
 - b. SFN 2033 Purchase Order. A four-part carbon form from Central Supply. These will no longer be available when the stocks in Central Supply are gone.
 - c. SFN 53329 Field Purchase Order. This short purchase order is padded into books, and it can be ordered from Central Supply. It is intended for local, over-the-counter purchases and can be hand-written.
3. Contracts. Ensure the final contract contains the statement of work agreed between the state and the successful vendor and incorporate all the terms and conditions from the solicitation. Consult your agency's legal counsel for assistance.
4. Contracts furnished by the vendor. Be sure to have the agency's legal counsel review any contracts (e.g. lease agreements) furnished by the successful bidder or offeror. Contracts provided by a vendor are often one-sided and heavily favor the vendor. It is imperative to make modifications to these contracts to ensure the State is properly protected.

7.8 Receiving, Inspection, and Acceptance

Your responsibility doesn't end when the purchase order or contract is issued, your role in the procurement process should continue until the commodities are delivered or the services have been performed. Purchase order or contract administration, which includes receiving, inspecting, acceptance, problem resolution, and payment, is very important. The best specifications and broadest competition are wasted efforts if the state pays for commodities received or services rendered that do not meet the requirements of the purchase order or contract.

- **Follow-up.** Ensure outstanding purchase orders and contracts are monitored to prevent missed deadlines, especially if the commodity or services is urgently needed. Document all communications with a vendor about outstanding orders. If your request needs an earlier delivery than originally agreed, you may need to authorize special shipping (usually at an additional cost).
- **Late and Early Deliveries.** Delivery is expected at the time agreed upon when the order was placed. Although early deliveries are usually welcomed, an early delivery may be rejected if the delivery imposes a hardship for your agency. If a delivery is late, send a written notice (letter, fax, or e-mail) to the vendor with whom the order was placed and require a written response explaining why delivery is late and ask when delivery can be expected. If the vendor's explanation and alternate delivery time are acceptable, document the file and communicate the new delivery date to the end-user. If you are unable to resolve the problem, contact your agency's procurement section for assistance.
- **Receiving, Inspection, and Acceptance.** Receive, inspect, and accept commodities and services as soon as practical after delivery to ensure compliance with the stated specifications and ensure the vendor receives timely payment. Promptly notify the vendor if the commodity or service fails to meet specifications or damaged commodities are received. Contact your agency's procurement section for assistance in resolving problems with delivered commodities and services.
- **Documenting the Procurement File.** Documenting the procurement file is one the last, but very important steps in the procurement process. Be sure you have maintain accurate and thorough documentation of the procurement, from initiation of the procurement process to close-out of the contract file.

7.9 Reporting Complaints

Substandard performance by a vendor, such as late deliveries or commodities/services that do not meet requirements should not be tolerated, and vendors who do not perform satisfactorily need to be reported to your agency's procurement section using a Formal Complaint Form, SFN2565 available on the OMB State Procurement Office website at <http://www.state.nd.us/csd/spo/agency-forms.html>.

7.10 Amendments and Cancellations.

When a vendor makes an offer and a procurement officer accepts that offer and issues a purchase order or contract, a contract has been formed between the vendor and the state. On occasion, administrative errors, omissions, or changing circumstances may create a need to cancel or amend a purchase order or contract after it has been issued to the vendor. Purchase orders and contracts must not be amended to avoid requirements to obtain competition. Contact your agency's procurement section for guidance when you need to amend or cancel a purchase order or contract.

Chapter 7: Protests

A vendor may protest your solicitation or award decision in accordance with N.D.C.C. § 54-44.4-10 and N.D.A.C. Chapter 4-12-14. If you become aware of a situation that could result in a protest, contact your agency's procurement section.

Chapter 8: Procurement Certification (Up to \$2,500)

Now that you have read this manual, complete the "Request for Level 1 Procurement Certification" form found on the last page of this manual. Send this form to your agency's procurement section. Before making any procurements, be sure you receive a delegation of purchase authority from your agency or institution.

Remember, this manual does not address each agency's policies and procedures. Contact your agency's procurement section if you need additional guidance or have questions regarding the contents of this manual.

Congratulations!



Request for Level 1 Certification
OMB/STATE PROCUREMENT OFFICE
SFN 53111

Level 1 Certification for individuals who perform small purchases up to \$2,500.

Individuals with purchase authority up to \$2,500 can obtain Level 1 Certification by reading the Level 1 Manual.

Instructions: The individual requesting this certification must complete and sign this certificate. The form must be sent to their agency's procurement section to be maintained on file.

The individual below has demonstrated Level 1 competency by reading the North Dakota Level 1 Procurement Manual

Name/Title of the person to be certified:		
Agency/Institution:		Dept. No.
Division/District:		
Address:		
City:	State:	Zip:
I certify that I have read and understand the Level 1 Manual. I agree to be held accountable for the competent, effective, legal, and ethical interpretation and application of this information.		
Signature:		Date: